

PATENT  
SPINE 3.3-418

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of	:	
Paponneau et al.	:	
	:	Group Art Unit: Not Yet Assigned
Application No. 10/433,769	:	
	:	Examiner: Not Yet Assigned
Filed: June 5, 2003	:	
	:	Date: April 29, 2004
For: SPINAL INTERVERTEBRAL	:	
IMPLANT ADJUSTABLE IN	:	
SITU COMPRISING HARD PASS	:	
POINT	:	

BOX MISSING PARTS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

DECLARATION OF CHRIS McDONNELL UNDER 37 C.F.R. § 1.47(a)

I, CHRIS McDONNELL, declare and say that:

1. I am Vice President of Global Technology for Stryker Spine ("Stryker"), the assignee of the above-referenced United States Patent Application No. 10/433,769 ("the '769 application") and any patents issuing therefrom. I submit this declaration with the proof required to establish that one of the two co-inventors of the '769 application, Frederic Conchy, has refused to join in the application.

2. The '769 application resulted from design activities of employees employed by Stryker. Frederic Conchy was an employee of Stryker, and within the scope of his employment, Mr. Conchy was involved in activities related to the subject matter of the '769 application. Mr. Conchy has since terminated his employment with Stryker.

3. Attachment I is a copy of Mr. Conchy's employment agreement with Stryker Spine (note that the employment agreement refers to Societe DIMSO, the former name of Stryker Spine). The employment agreement, as attached, is written in French. Codicil n° 01 adds article 8 (the same provision as article 11 of Codicil n° 03). This article reads in English as the following:

Application No. 10/433,769

"ARTICLE 8: INTELLECTUAL AND/INDUSTRIAL PROPERTY RIGHTS – Should Mr. Conchy, within his practice which includes an inventive mission, make any invention, whether patentable or not, create designs or shapes, methods, programs formulae or processes which are related to the activities, studies and researches of the company and which are liable to be protected, the Intellectual or Industrial Property Rights resulting therefrom would automatically belong to the company."

4. The employment agreement also indicates and I have first-hand knowledge that Mr. Conchy left the company on July 12, 2002.

5. I have first-hand knowledge that Mr. Conchy was well aware that a United States patent application would be filed for the subject matter related to his activities. I also have first-hand knowledge that Mr. Conchy was aware that he would be named as an inventor in any such application.

6. The '769 patent application was filed in the United States Patent and Trademark Office on June 5, 2003. Mr. Conchy was named as one of the co-inventors.

7. I have first-hand knowledge that Mr. Conchy has indicated that he does not intend to cooperate in the filing and prosecution of the '769 patent application. I have presented Mr. Conchy with a copy of the application papers filed in the United States Patent and Trademark Office, including the statutory Declaration.

8. Subsequent to presenting the copy of the application papers to Mr. Conchy, he refused to sign the statutory Declaration. It is my current opinion that Mr. Conchy will continue to refuse to sign the statutory Declaration.

9. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: 4-29-04

  
Chris McDonnell

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